

§ 531.9

adjustment necessitated by either liability for liquidated damages appearing in the NSA as filed with the Commission under § 531.6(b)(7), or the occurrence of an event described below in paragraph (d)(2) of this section.

(2) In the event of cancellation as defined in § 531.3(g):

(i) Further or continued implementation of the NSA is prohibited; and

(ii) The cargo previously carried under the NSA shall be re-rated according to the otherwise applicable tariff provisions.

(e) If the amendment, correction or cancellation affects an essential term required to be published under § 531.9, the statement of essential terms shall be changed as soon as possible after the filing of the amendment to accurately reflect the change to the NSA terms.

Subpart C—Publication of Essential Terms

§ 531.9 Publication.

(a) *Contents.* All authorized persons who choose to file NSAs under this part are also required to make available to the public, contemporaneously with the filing of each NSA with the Commission, and in tariff format, a concise statement of the following essential terms:

(1) The port ranges:

(i) origin; and

(ii) destination;

(2) The commodity or commodities involved;

(3) The minimum volume or portion; and

(4) The duration.

(b) *Certainty of terms.* The terms described in paragraph (a) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly detailed in the statement of essential terms, unless those terms are contained in a publication widely available to the public and well known within the industry. Reference may not be made to a tariff of a common carrier other than the NVOCC party to the NSA.

(c) *Location.* The statement of essential terms shall be published as a sepa-

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rate part of the individual NVOCC's automated tariff system.

(d) *References.* The statement of essential terms shall contain a reference to the "NSA Number" as described in § 531.6(e)(1).

(e) *Terms.* (1) The publication of the statement of essential terms shall accurately reflect the terms as filed with the Commission.

(2) If any of the published essential terms include information not required to be filed with the Commission but filed voluntarily, the statement of essential terms shall so note.

(f) *Commission listing.* The Commission will publish on its website, www.fmc.gov, a listing of the locations of all NSA essential terms publications.

(g) Updating statements of essential terms. To ensure that the information contained in a published statement of essential terms is current and accurate, the statement of essential terms publication shall include a prominent notice indicating the date of its most recent publication or revision. When the published statement of essential terms is affected by filed amendments, corrections, or cancellations, the current terms shall be changed and published as soon as possible in the relevant statement of essential terms.

Subpart D—Exceptions and Implementation

§ 531.10 Excepted and exempted commodities.

(a) *Statutory exceptions.* NSAs for the movement of the following, as defined in section 3 of the Act, the Commission's rules at 46 CFR 530.3 or 46 CFR 520.1, are not subject to the conditions of this exemption:

(1) Bulk cargo;

(2) Forest products;

(3) Recycled metal scrap;

(4) New assembled motor vehicles; and

(5) Waste paper or paper waste.

(b) *Commission exemptions.* The following commodities and/or services are not subject to the conditions of this exemption:

(1) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions approved by the Military Transportation Management Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

(c) *Inclusion of excepted or exempted matter.* (1) The Commission will not accept for filing NSAs which exclusively concern the commodities or services listed in paragraph (a) or (b) of this section.

(2) NSAs filed with the Commission may include the commodities or services listed in paragraph (a) or (b) of this section only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the commodity or service in question; or

(ii) The NSA itself sets forth a rate or charge which will be applied if the NSA is canceled, as defined in §531.3(e) and §531.8(d).

(d) *Waiver.* Upon filing an NSA pursuant to paragraph (c) of this section, the NSA shall be subject to the same requirements as those for NSAs generally.

§531.11 Implementation.

Generally. Performance under an NSA or amendment thereto may not begin before the day it is effective and filed with the Commission.

Subpart E—Recordkeeping and Audit

§531.12 Recordkeeping and audit.

(a) *Records retention for five years.* Every NVOCC shall maintain original signed NSAs, amendments, and their associated records in an organized, readily accessible or retrievable manner for a period of five (5) years from the termination of each NSA. These records must be kept in a form that is readily available and usable to the Commission; electronically maintained records shall be no less accessible than if they were maintained in paper form.

(b) *Production for audit within 30 days of request.* Every NVOCC shall, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Trade Analysis, submit copies of requested original NSAs or their associated records within thirty (30) days of the date of the request.

§531.13–531.98 [Reserved]

§531.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072-0070. The valid control number for form FMC-78 is 3072-0070.

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 31370, June 1, 2005]

APPENDIX A TO PART 531—INSTRUCTIONS FOR THE FILING OF NSAS

NSAs shall be filed in accordance with the instructions found on the Commission's home page, <http://www.fmc.gov>.

A. REGISTRATION, LOG-ON I.D. AND PASSWORD

To register for filing, an NVOCC or authorized agent must submit the NSA Registration Form (Form FMC-78) to BTA. A separate NSA Registration Form is required for each individual that will file NSAs. BTA will direct OIT to provide approved filers with a log-on identification number ("I.D.") and password. Filers who would like a third party (agent/publisher) to file their NSAs must so indicate on Form FMC-78. Authority for filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on I.D. and password. The original log-on ID will be canceled when a replacement log-on I.D. is issued. Log-on I.D.s and passwords may not be shared with, loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any log-on I.D. that is shared with, loaned to or used by parties other than the registrant.

B. FILING

After receiving a log-on I.D. and a password, a filer may log-on to the NSA filing area on the Commission's home page and file